IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

PETER A. DEFILLIPO,	)	
	)	C.A. No. 08C-02-009 JTV
v.	)	
	)	
RONALD A. QUARLES, JR. and	)	
FRED AND SON TOWING, a	)	
foreign business entity and	)	
PATRICIA QUARLES,	)	
	)	
Defendants	)	

Submitted: November 30, 2009
Decided: February 26, 2010

I. Barry Guerke, Esq., Parkowski, Guerke & Swayze, Dover, Delaware. Attorney for Plaintiff.

William J. Cattie, III, Esq., Rawle & Henderson, Wilmington, Delaware. Attorney for Defendant.

Upon Consideration of
Defendants' Motion For Summary Judgment
Granted In Part
Denied In Part

VAUGHN, President Judge

DeFillipo v. Quarles, et al.
C.A. No. 08C-02-009 (JTV)
February 26, 2010

OPINION

This personal injury action is the result of a March 30, 2007 car accident that occurred in New Castle County, Delaware. The plaintiff, Peter A. DeFillipo, was changing his tire on the shoulder of I-495. He alleges that he was seriously injured when a Volkswagen Golf (the "Golf") veered onto the shoulder and struck him. The defendant, Ronald A. Quarles, Jr. was the operator of the Golf. Also named as defendants are Fred and Son Towing and Patricia Quarles, the owner of Fred and Son Towing. One of the plaintiff's contentions for liability against Fred and Son Towing and/or Patricia Quarles is that Ronald Quarles was the servant, agent or employee of Fred and Son Towing and/or Patricia Quarles, and was acting within the scope and course of that relationship at the time of the accident.

Fred and Son Towing was insured by Stonington Insurance Company. Stonington filed a declaratory judgment action in the United States District Court for the Eastern District of Pennsylvania, alleging that it had no duty to defend or indemnify Ronald Quarles.[1] On a motion for partial summary judgment filed by Stonington, the District Court concluded that Ronald Quarles was driving the Golf in furtherance of his own business, and not in furtherance of the business of Fred and Son Towing.[2] As a result of this finding and other language in the policy not relevant here, the District Court granted Stonington's motion for partial summary judgment on June 25, 2009. After the June 25th Order, the parties reported that the remaining

[1] *See* Def. Mot. Summ. J. Ex. A.

[2] *Stonington Ins. Co. v. Patricia Quarles et. al.*, No. 2:08-cn-1402, at 8 (E.D. Pa. June 25, 2009) (ORDER) ("Order").

issues in the declaratory action had been settled.[3] Accordingly, the District Court dismissed the matter, with prejudice, on August 10, 2009.[4]

Before the Court is a Motion for Summary judgment filed by Fred and Son Towing and Patricia Quarles (the "moving defendants").

STANDARD OF REVIEW

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[5] The moving party bears the burden of establishing the non-existence of material issues of fact.[6] If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.[7] In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.[8] Thus, the court must accept all undisputed factual assertions and accept the non-movant's version of any disputed facts.[9] Summary judgment is inappropriate "when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more

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[3] The remaining issues related to whether Stonington had a duty to defend or indemnify Fred and Son Towing and/or Patricia Quarles.

[4] Pl. Mot. Opp. Summ. J. Ex. 1.

[5] Super. Ct. Civ. R. 56(c).

[6] *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super.).

[7] *Id.*

[8] *Pierce v. Int'l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

[9] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

throughly into the facts in order to clarify the application of law to the circumstances."[10]

DISCUSSION

The moving defendants assert two alternative theories for summary judgment: *res judicata* and collateral estoppel. Under the doctrine of *res judicata*, a party is foreclosed from bringing a second suit based on the same cause of action after a judgment has been entered in a prior suit involving the same parties.[11] Similarly, where a court has decided an issue of fact necessary to its decision, the doctrine of collateral estoppel precludes relitigation of that issue in a subsequent suit or hearing concerning a different claim or cause of action involving a party to the first case.[12] Essentially, *res judicata* bars a court from reconsidering conclusions of law previously adjudicated while collateral estoppel bars relitigation of issues of fact previously adjudicated.[13]

In the June 25th Order, the District Court determined, in pertinent part:

> DeFillipo has not pointed to any admissible evidence from which a rational fact finder could conclude that Ronald Quarles was driving the Golf in furtherance of the business of Fred and Son Towing. Instead, all of the admissible

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[10] *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at *4 (Del. Super.).

[11] *Betts v. Townsends, Inc.*, 765 A.2d 531, 534 (Del. 2000) (citing *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 520 (Del. 1999)).

[12] *Betts*, 765 A.2d at 534 (citing *Messick v. Star Enter.*, 655 A.2d 1209, 1211 (1995)).

[13] *Betts*, 765 A.2d at 534 (citing *M.G. Bancorporation*, 737 A.2d at 520).

> evidence demonstrates that Ronald Quarles was transporting the Golf on behalf of his own business, Fast Towing. There is therefore no genuine dispute of fact on this issue.[14]

A. *Res Judicata*

I am not persuaded that the doctrine of *res judicata* bars the plaintiff from pursuing a negligence claim under the doctrine of *respondeat superior*. The elements of the defense of *res judicata* are: (1) the claim in the second action must be the same as in the first action; (2) the prior judgment must be a final personal judgment in favor of one of the parties; and (3) the parties to the second action must be parties or privies of parties to the first action.[15] I conclude that element one is not satisfied in this case because it is clear that the claim in this state court action, a negligence claim under the doctrine of *respondeat superior*, is not the same as that in the federal action, a contract claim determining whether Stonington had a duty to defend or indemnify Ronald Quarles. Therefore, I conclude that the doctrine of *res judicata* is inapplicable to the facts of this case.

B. Collateral Estoppel

I am persuaded, however, that the principle of collateral estoppel bars the plaintiff from pursuing a negligence claim against Fred and Son Towing and/or Patricia Quarles under the doctrine of *respondeat superior*. To determine whether

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[14] Order at 8-9.

[15] *One Virginia Condominium Assoc. of Owners v. Reed*, 2005 WL 1924195, at *7 (Del. Ch.).

collateral estoppel applies to bar consideration of an issue, a court must determine whether: (1) the issue previously decided is identical with the one presented in the action in question; (2) the prior action has been finally adjudicated on the merits; and (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.[16] Element three does not appear to be in dispute because the plaintiff was a named party in the declaratory action. For the following reasons, I conclude that the remaining elements are satisfied.

1. The issue previously decided is identical with the one presented in the action in question.

The claim before the District Court was whether Stonington had a duty to defend or indemnify Ronald Quarles. In order to resolve this claim, it was necessary for the District Court to determine whether or not Ronald Quarles was driving the Golf in furtherance of the business of Fred and Son Towing. Regarding this issue, as mentioned, the District Court determined that there was "no admissible evidence from which a rational fact finder could conclude that Ronald Quarles was driving the Golf in furtherance of the business of Fred and Son Towing. Instead, all of the admissible evidence demonstrates that Ronald Quarles was transporting the Golf on behalf of his own business, Fast Towing."[17]

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[16] *Betts*, 765 A.2d at 535 (quoting *State v. Machin*, 642 A.2d 1235, 1239 (Del. Super. 1993)).

[17] Order at 8.

In the instant action, the plaintiff asserts that the moving defendants are vicariously liable for the alleged negligence of Ronald Quarles. In order to resolve this claim, it is necessary to determine whether the alleged negligence was committed "within the scope of [Quarles'] employment which, theoretically at least, means that [it was] committed in furtherance of [Fred and Son's Towing] business."[18] I conclude that this issue is identical to the one resolved by the June 25th Order, and therefore the first element of collateral estoppel is satisfied.

2. The prior action has been finally adjudicated on the merits.

The plaintiff presents two arguments on this element. First, the plaintiff contends that the District Court's decision did not finally adjudicate the claim on the merits because it "was one only for partial summary judgment, not resolving in full all of the issues."[19] This argument is not persuasive. The Restatement (Second) of Judgments § 13 provides:

> The rules of res judicata are applicable only when a final judgment is rendered. However, for purposes of issue preclusion (as distinguished from merger and bar), 'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect.[20]

Moreover, comment e to § 13 states that "[a] judgment may be final in a *res judicata*

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[18] *Simms v. The Christina School District*, 2004 WL 344015, at *5 (Del. Super.) (quoting *Draper v. Olivere Paving & Constr. Co.*, 181 A.2d 565, 569 (Del. 1962)).

[19] Pl. Mot. Opp. Summ. J. at 2.

[20] Restatement (Second) of Judgments § 13 (1982).

sense as to a part of an action although the litigation continues as to the rest."[21] Accordingly, I conclude that doctrine of collateral estoppel applies even though the June 25th Order was an entry of partial summary judgment.

Next, the plaintiff argues that the August 10th Order is not a final adjudication on the merits because "the parties stipulated to the dismissal of the remaining parties unaffected by the decision and the order entered refers to the settled status of the case."[22] In support of this argument, the plaintiff cites *One Virginia Condominium Association of Owners v. Reed*.[23] In that case, the Court of Chancery concluded that a settlement agreement, which was not filed with the court and did not reflect an intent by the parties to effectuate a final judgment, was an insufficient basis for collateral estoppel.[24] While I agree that the August 10th Order did not resolve the issues on the merits, the fact remains that the June 25th Order still satisfies the second element of collateral estoppel.

3. The party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

The plaintiff argues that this Court "need not adhere to the application of [*res judicata* and collateral estoppel] where to do so would work an injustice such as where

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[21] Restatement (Second) of Judgments § 13 cmt. e. The term "res judicata" in this comment is used in a broad sense as including all three concepts of merger, bar, and issue preclusion. *See* Restatement (Second) of Judgments Introductory Note.

[22] Pl. Mot. Opp. Summ. J. at 2.

[23] 2005 WL 1924195 (Del. Ch.).

[24] *Id.* at *9-10.

a party did not have [a] full or fair opportunity to litigate in the earlier case."[25] The plaintiff seems to contend that he was not given a full or fair opportunity to litigate in the earlier case because the District Court: (1) ruled that Patricia Quarles' statements were conclusive on the issue of whether Ronald Quarles was acting on behalf of Fred and Son Towing; and (2) failed to consider statements of Ronald Quarles contained in a May 31, 2007 letter written by Allstate New Jersey Insurance Company.[26] Specifically, the plaintiff contends that Ronald Quarles' statements within the letter would be admissible under Delaware law, either as an admission of a party opponent or as a hearsay exception for statements against interest.

I conclude, however, that the plaintiff had a full and fair opportunity to litigate whether or not Ronald Quarles was operating the Golf in the furtherance of Fred and Son Towing. In its opposition to the moving defendants' motion for summary judgment, the plaintiff relies upon the oral sworn statement of Patricia Quarles in the federal action and her deposition in this action, which includes testimony from Patricia Quarles about statements made to her by Ronald Quarles. The plaintiff also relies upon the May 31, 2007 letter, in which it is reported that Ronald Quarles told certain persons that he was responsible for the accident and that he was a co-owner of Fred and Son Towing. This same evidence was presented to the District Court. It appears

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[25] Pl. Mot. Opp. Summ. J. at 4.

[26] The plaintiff also argues that the District Court "weighed the evidence and assessed credibility which is impermissible under Delaware law on a motion for summary judgment." Pl. Mot. Opp. Summ. J. at 2. A careful reading of the June 25th Order, however, reveals that the District Court did not "weigh the evidence or make credibility determinations." Order at 2.

that the District Court considered the plaintiff's arguments and rejected them.

It is true that the District Court would not give any weight to the May 31, 2007 letter because it was hearsay, stating that "[d]efendant DeFillipo has not offered any hearsay exception that would permit the admission of the letter in its current form, and indeed, we do not believe that any exception applies."[27] The same hearsay exceptions which the plaintiff relies upon here exist under the federal rules. I am satisfied that the plaintiff had a full and fair opportunity to argue those exceptions in the federal proceeding, and I find that the plaintiff is collaterally estopped from relitigating them here.

I conclude that all four elements of collateral estoppel have been satisfied in this case. Accordingly, the plaintiff is foreclosed by the doctrine of collateral estoppel from contending that Fred and Son Towing and/or Patricia Quarles are liable on a theory of *respondeat superior*. Summary judgment is granted as to that theory of liability.

The plaintiff also contends that Fred and Son Towing and/or Patricia Quarles are liable on a theory of negligent entrustment. I find that neither *res judicata* nor collateral estoppel applies to this theory.

Therefore, the motion of defendants Fred and Son Towing and Patricia Quarles is ***granted in part and denied in part***.

IT IS SO ORDERED.

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[27] Order at 5.

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C.A. No. 08C-02-009 (JTV)
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/s/ James T. Vaughn, Jr.

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